IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5952 of 1993
with
SPECIAL CIVIL APPLICATION NOs.5953, 5954 & 5955 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANIBEN WD/O AMBALAL THO HER HEIR LALITABEN NATHUBHAI
Versus
GANDEVI PEOPLES CO-OP BANK LTD

Appearance:
1. Special Civil Application No. 5952 to 5955 of 1993
MR DHIRENDRA MEHTA for Petitioner No. 1-3
MR MILAN S JOSHI for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 19/09/2002

ORAL(COMMON)JUDGEMENT

In all these petitions there are, more or less, common facts and common contentions and, therefore, they are being dealt with together by this common judgment.

2. The respondent 1-Bank filed (i) Lavad Suit No.356/81 for recovery of Rs.16,661/- together with interest against the petitioners of Special C.A.No.5952/93, (ii) Lavad suit No.357/81 for recovery of Rs.16,559.06 ps together with interest against the petitioners of Spl.C.A.No.5953/93, (iii) Lavad Suit No.329/81 for recovery of Rs.15,885.67 ps together with interest against the petitioners of Spl.C.A.No.5954/93 and (iv) Lavad Suit No.328/81 for recovery of Rs.18,696.72 ps together with interest against the petitioners of Spl.C.A.No.5955/92. All these suits were filed before the Registrar, Board of Nominees at Surat. The learned Nominee tried all the aforesaid suits and ultimately judgments and awards were passed in favour of the respondent No.1-Bank who was the plaintiff in the aforesaid suits to the extent that first the amount be recovered from the defendant No.4 and thereafter from defendant Nos 1,2 & 3, as the case may be.

3. The respondent No.1-Bank preferred Appeal Nos 342,343.266 and 341/90 against the judgment and award in Lavad Suit Nos 356, 357, 329 and 328/81 respectively. There was some delay in preferring appeal as per the contention of the petitioners herein. The Gujarat State Cooperative Tribunal heard all the appeals and ultimately on October 28, 1991 passed the judgment and order whereby the tribunal at para 9 observed as under:

> "In view of the above discussion and case law on the point we find that the group of four appeals suffers from limitation and on the ground of limitation they are not maintainable and deserve to be dismissed."

However, the tribunal in the said judgment while touching the merits of appeals at para 14 observed as under:

> "We also find that the judgment and award do not call for any interference but the same deserves to be confirmed. Thus, on merits also there is no substance in the present group of appeals and the same have to be dismissed."

In view of the above, ultimately, the tribunal dismissed all the aforesaid appeals as per judgment and order dated 28.10.1991.

4. The respondent No.1-Bank preferred Review

Application Nos 16, 17, 18 and 19/91 in the respectively appeals against the aforesaid judgment and order of the tribunal dated 28.10.1991. The contention of the respondent No.1 appears to be that the intimation as required under as required under Rule 41(4) of the Gujarat Cooperative Societies Rules was not given by the learned Nominee earlier and such intimation came to be received only on 7.11.1989. The bank has also contended in the said review applications that after receiving intimation regarding passing of judgment and award by the nominee, application for certified copy was made and on receipt thereof immediately appeal is preferred in the month of December bearing Appeal No.266/90. It was also contended by the bank that so far as other three appeals are concerned on account of legal and technical aspects and for want of specific clear advice it could not prefer appeals and there was delay and they were preferred in the month of April, 1991 and therefore that the review applications on the said aspect are required to be considered and the judgment and order passed by the tribunal deserves to be reviewed on the point of limitation and it was also submitted that the arguments were advanced by the learned counsel appearing on behalf of the bank only on the question of limitation and not on merits. Ultimately, the tribunal as per its judgment and order dated 25.2.93 accepted that there is ground and allowed the review application and directed that the aforesaid appeals be restored to file and fixed hearing of appeals on 17.2.93 for consideration on merits. It is the said common order dated 25.2.93 passed by the tribunal which is under challenge in this petition.

5. The learned counsel Mr.Mehta appearing for the petitioners contended that for exercising power of review there must be a substantial error on the face of record or error on the question of law on the face of record and then only the power can be exercised. Mr.Mehta submitted that while dismissing the appeals earlier as per judgment dated 28.10.1991 the Tribunal did examine the merits of the matter and thereafter even if the tribunal finds that there is ground for condonation of delay the judgment could not have been reviewed and the tribunal could not have directed for hearing of appeal on merits. Mr.Mehta submitted that the order has been passed by the tribunal and the same deserves to be quashed by this honourable court exercising powers under Article 227 of the Constitution.

6. On behalf of the respondents Mr.Joshi has supported the order passed by the tribunal.

7. Having considered the above, it appears that the tribunal as observed earlier at para 9 of its judgment and order dated 28.10.1991 and found that the appeals suffer from limitation and on the ground of limitation they are not maintainable and deserve to be dismissed and the tribunal in terms observed that the appeals are barred by delay and they are not maintainable. It is true that the tribunal while dismissing the appeals on question of limitation has also touched the merits of the matter. However, in the review the contention was raised that the learned advocate for the bank did not press the petition on merits of the matter. Mr.Mehta for the petitioners at this stage submitted that the tribunal at para 10 of its judgment has also recorded that at the request of the learned advocates of the parties the aspect of merit in respect of the said appeals is also taken up by the tribunal and therefore he submitted that it is deemed that the contention are raised by the respondent Bank and the same are examined by the tribunal. Therefore Mr.Mehta submitted that it can not be said that the tribunal has not properly considered the merits of the matter or that the arguments were not advanced on behalf of both sides regarding merits of the matter.

8. The question as to whether the arguments were advanced when it was recorded by the tribunal that the tribunal has also considered the merits of the matter, in my view, it is not necessary for this court to go into details on the said aspect, more particularly, at the time when the matter dismissed for delay or on the question of limitation and if the matter is touched on merits also it can not be said that the finding on merit would operate as bar to the tribunal to review or recall its own order when the tribunal finds that the order for dismissal of appeals on the question of limitation deserves to be reviewed. In my view that after the tribunal while reviewing its earlier judgment and order has merely concentrated on the point of limitation and it appears that the tribunal did not examine in detail on merits of appeal and the tribunal was more carried by the point of limitation when the earlier judgment was delivered dated 28.10.1991. When the tribunal itself found that since on question of limitation there was a case made out and the appeal is required to be re-heard and reconsidered it can not be said that the tribunal has exceeded its jurisdiction while considering the review application.

9. However, considering the facts and circumstances of the case, I am of the view that since there was delay

on the part of the bank and thereafter circumstances were shown in the revision application and the delay is found to be reasonable, the petitioners herein who were opponents in the revision application would in any case be entitled to reasonable costs of litigation and the tribunal while allowing the review application and condoning delay ought to have awarded reasonable costs to the petitioners herein and said aspect is to that extent not properly considered by the tribunal and therefore while confirming the order of the tribunal below review application on merits modification on the order of costs will be required to be made. Upon the quary put by the court on the reasonable costs while condoning the delay by the tribunal in review application, Mr.Joshi said that he has no instructions for costs and the matter is left to the discretion of the court.

10. In view of the aforesaid discussion, the judgment and order dated 25.2.93 passed by the tribunal in Revision Application Nos 16, 17, 18 & 19/91 is modified to the extent that the petitioners herein who were opponents before the tribunal in the review applications would be entitled to costs of Rs.2,000/- in each review application. The rest of the operation of the order of the tribunal is not disturbed and as a consequence thereof all the four appeals will have to be heard by the tribunal on merits.

11. All the petitions are allowed partly to the aforesaid extent and rule in each petition is made absolute accordingly.

19.9.02 (JAYANT PATEL,J)